IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNITED LEASING, INC.,	§	
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**CIVIL ACTION NO._______**
	§	
	§	
	§	
DAVIS CHEMICAL SERVICES, LLC,	§	
	§	
Defendant.	§	
	§	

COMPLAINT

COMES NOW, United Leasing, Inc., on its own behalf and as assignee of Scott Capital Equipment Finance, LLC ("United Leasing" or “Plaintiff”) complaining of Davis Chemical Services, LLC (“Defendant”), and for cause of action would respectfully show the Court as follows:

I. NATURE OF THE ACTION

This action arises out of Defendant’s failure to honor the terms of a lease for commerical equipment provided by Plaintiff.

II. PARTIES.

1. United Leasing is a corporation organized under the laws of the state of Indiana and with its principal place of business in Indiana.

2. Scott Capital Equipment Finance, LLC (“Scott Capital”) is a limited liability company organized under the laws of the state of Georgia, with a principal place of business in Georgia.

3. Defendant is a Texas Limited Liabiltiy Company with a principal place of

business at 281 Gateway Park Dr., Marshall, Texas 75672 and may be served with citation through its registered agent for service of process: National Corporate Research, LTD, 1501 Elm St., Suite 4360, Dallas, Texas 75201. Alternatively, Defendant may be served with a copy of this pleading at its principal place of business by service upon an officer, managing or general agent of the Defendant. None of Defendant's members maintain their domiciles in Indiana or Georgia.

III. JURISDICTION AND VENUE.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, as there is complete diversity of citizenship between the parties and, as set forth below, the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

5. The Court has personal jurisdiction over the Defendant because it has its principal place of business in Texas. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant does business in this judicial district and because a substantial part of the events or omissions giving rise to this action occurred within this judicial district.

IV. STATEMENT OF FACTS

6. On or about March 30, 2015, Defendant executed a Master Equipment Lease (the "Lease")[1] with Scott Capital Equipment Finance, LLC ("Scott Capital") concerning the rental of the following property (the "Equipment"):

- New 2015 Dragon Trailer Mounted 2500HP Quintuplex Frac Pump including Caterpillar Engine No. WF500247, Caterpillar Transmission No. PCJ2239, Power End No. G0614-10248, Fluid End No. DPQM4.00-219 and Radiator No. 00127419; and

[1] A true and correct copy of the Lease is attached as **Exhibit "A"**.

- New 2015 Dragon Trailer Mounted 2500HP Quintuplex Frac Pump including Caterpillar Engine No. WF500294, Caterpillar Transmission No. PCJ2662, Power End No. G0714-10318, Fluid End No. DPQM4.00-222 and Radiator No. 00141640

7. The term of the Lease was forty-eight (48) months (the "Lease Term"), with an initial payment of 195,000.64 and forty-seven (47) additional payments of $36,788.51 each.[2] The Lease provides that Defendant incurs a late charge of 1.5% per month on any delinquent amounts.[3] The Lease further provides that, if Defendant fails to make a payment when due, it will be in default and United Leasing may "…reduce its claim to judgment, foreclose, or otherwise enforce its claim and security interest by any available judicial procedure."[4] Pursuant to the terms of the Lease, Scott Capital was the owner of the Equipment and had the right to possession of the Equipment upon expiration of the Lease Term or upon cancellation or termination of the Lease.[5]

8. Scott Capital executed a Collateral Assignment of Leases and Rents, including the Lease (the "Collateral Assignment")[6] in connection with a Loan and Security Agreement executed by and between United Leasing and Scott Capital dated March 30, 2015 (the "Loan and Security Agreement").[7] Under the terms of the Loan and Security Agreement and Collateral Assignment Scott Capital assigned the Lease to United Leasing, together with "all of the rents profits and issues due and to become due from the Equipment, together with all documents,

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[2] *See Id.* at p. 1.

[3] *See Id.* at p. 3, ¶ 13.

[4] *See Id.* at ¶ 12.

[5] *See Id.* at ¶ 10, p. 7, ¶ 17.

[6] A true and correct copy of the Collateral Assignment of Leases and Rents is attached as **Exhibit "B"**.

[7] A true and correct copy of the Loan Agreement is attached as **Exhibit "C".**

leases, agreements, service contracts and insurance policies affecting the Equipment."[8] As a result, Plaintiff is the owner and holder of the Lease, with all rights of enforcement therein.

9. Defendant defaulted under the terms of the Lease by failing to make lease payments when due. Consequently, on February 10, 2016 and again on July 7, 2016, United Leasing sent Defendant a Notice of Default and Demand for Payment ("Notice of Default"),[9] advising that: (1) the outstanding balance due on the Lease as of February 10, 2016 was $2,057,813.81, which represented the accelerated lease payments due plus the fair market value of the Equipment, but excluding attorneys fees and costs; and (2) Defendant's failure to timely cure the delinquency (within 5 days of demand) had resulted in acceleration of the Lease.

10. Defendant failed to cure the delinquency. Consequently, United Leasing accelerated the Lease and has taken possession of the Equipment in accordance with the terms of the Lease. United Leasing has not yet sold or otherwise liquidated the Equipment; however, all conditions precedent to United Leasing's right of recovery of a monetary judgment against Defendant have been performed and/or have occurred.

V. CAUSES OF ACTION

11. Plaintiff repeats and re-alleges the allegations in the foregoing paragraphs and incorporates them by reference, as if fully set forth herein.

12. The facts recited above give rise to a cause of action for ***breach of contract***, and any damages resulting therefrom which Plaintiff hereby alleges.

13. Defendant is a party to the Lease Agreement, and United Leasing is entitled to

[8] Exhibit "B" (Collateral Assignment), p. 1.

[9] A true and correct copy of the Notices of Default are attached as **Exhibit "D"**.

enforce the Lease Agreement as assignee of rights from Scott Capital. Defendant breached the terms and conditions of the Lease Agreement by failing to make timely payments due from and after February, 2016 and by violating financial covenant minimums set forth in the Master Equipment Lease Schedule.

14. United Leasing provided Defendant with equipment and continued extension of credit in reliance upon Defendant's contractual representations. United Leasing performed all conditions and covenants required of it pursuant to the Lease Agreement in good faith and in accordance with reasonable commercial standards. The above acts and omissions constitute a material and unexcused breach of the Lease Agreements by Defendant. As a result of Defendant's ongoing breach, United Leasing has incurred damages, including but not limited to unpaid lease payments, costs, expenses and attorney's fees, and seeks recovery of such damages within the jurisdictional limits of this Court.

15. Defendant is liable to United for liquidated damages unde the Lease. By executing the Lease, Defendant stipulated to liquidated damages upon default, to be calculated by formula.[10] Based upon the default provisions under the Lease, including the stipulated loss provision found therein, Defendant is contractualy obligated to pay United Leasing for thirty-eight (38) remaining Lease payments of $36,788.51 each; and Defendant is also liable for the estimated fair market value of the Equipment at the end of the Lease term, which is $700,000.00. Using the stipulated loss formula to calcluate damages, the present value of the lease payments and equipment comes to $2,054,407.13. The Lease also obligates Defendant to pay sales tax of $169,488.59, which is caclulated at 8.25% on the $2,054,407.13 outstanding balance owed.

[10] *See* **Exhibit "A"**, p. 4, ¶ 14(f) (stipulated damages upon default); and Master Equipment Lease Schedule attached to Exhibit A at p. 3 of 3 (Stipulated Loss formula).

Additionally, Defendant is obligated to pay 2016 assessed property taxes on the Equipment in the amount of $45,446.05. Finally, Defendant remains liable to United Leasing for reposeession fees in the amount of $1,720.00 and late / NSF fees of $7,243.79. Based on the foregoing, the total amount due from Defendant to United Leasing is currently $2,278,305.56, without including attorneys fees or expenses.

16. Pursuant to the terms of the Lease, United Leasing is also entitled to recover its reasonable attorneys' fees and court costs.[11] Thus, United Leasing seeks recovery of said attorneys' fees and court costs, in addition to actual damages, together with interest thereon as provided by law.

WHEREFORE, PREMISES CONSIDERED, United Leasing, Inc. prays that Defendant Davis Chemical, LLC be cited and served with this Compalint and that the Defendant be required to appear and answer; and that upon hearing and/or trial hereof, the Court:

(1) Issue judgment against Defendant in the amount of $2,278,305.56, an amount in excess of the minimum jurisdictional limits of this court; and

(2) Issue an award of reasonable attorneys' fees and costs of court; and

(3) Issue an award for prejudgment and post judgment interest as allowed by law; and

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[11] *See* **Exhibit "A"**, p. 3, ¶ 14.

Plaintiff prays, further, for such other and further relief, both in law and equity, as this Court may deem just.

Respectfully submitted,

MCGLINCHEY STAFFORD, PLLC

By: */s/ Steven T. Holmes*

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